

**AGREED ORDER FOR RESUMPTION OF
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
AT THE FALCON REFINERY SUPERFUND SITE,
INGLESIDE, SAN PATRICIO COUNTY, TEXAS**

By this Agreed Order, the U.S Environmental Protection Agency, Region 6 (EPA) has determined that the National Oil Recovery Corporation (NORCO), owner of the Falcon Refinery Superfund Site, Ingleside, San Patricio County, Texas (Site) and Responsible Party under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. '9607 (CERCLA) shall resume performance of the remedial investigation and feasibility study (RI/FS) in accordance with the Administrative Order on Consent for Remedial Investigation and Feasibility Study in the matter of Falcon Refinery Site, San Patricio County, Texas, National Oil Recovery Corporation (NORCO) Respondent, CERCLA Docket No. 06-05-04 (RI/FS Order).

- A. Whereas, NORCO was informed in the Work Takeover letter dated March 28, 2011 from Pam Phillips, Acting Division Director, that the EPA had determined it necessary to take over performance of remaining work required under the Removal Order in accordance with the takeover provision of Section XX, Paragraph 76 of the Removal Order. In addition, NORCO was informed in the March 28, 2011, Work Takeover letter that EPA had determined it necessary to take over performance of the remaining work required under the Administrative Order on Consent for Remedial Investigation and Feasibility Study, in the matter of Falcon Refinery Site, San Patricio County, Texas, National Oil Recovery (NORCO) Respondent, CERCLA Docket No. 06-05-04 (RI/FS Order) in accordance with the work takeover provisions of Section XXIV, Paragraph 88 and Section XXVIII, Paragraph 102 of the RI/FS Order.
- B. Whereas, EPA had invoked the work takeover provisions of the Removal Order and the RI/FS Order because NORCO has defaulted in the performance of the terms and conditions of the Removal Order and the RI/FS Order.
- C. Whereas, EPA has withdrawn the work takeover of the remaining work required for the removal action at the Site in accordance with the conditions delineated in the May 2, 2011 Agreed Order for Resumption of Removal Action at the Falcon Refinery Superfund Site.
- D. Whereas, in accordance with the May 2, 2011 Agreed Order for Resumption of Removal Action at the Falcon Refinery Superfund Site, NORCO has resumed performance of the remaining work required for the removal action at the Site by the Administrative Order on Consent for Removal Action CERCLA Docket No. 06-

04-04) under the oversight of EPA On Scene Coordinator Gary Moore.

- E. Whereas EPA has transmitted a Notice of Lien to NORCO in a letter dated March 28, 2011, which states that the Agency believes it has a reasonable basis upon which to perfect a lien.
- F. Whereas, NORCO seeks to resume performance of the RI/FS, and rescission of the Notice of Lien from EPA.
- G. Whereas, NORCO contends that approximately 75% - 80% of the RI/FS work has been completed.
- H. Whereas, EPA has determined that NORCO shall resume performance of the RI/FS in accordance with the RI/FS Order and EPA shall withdraw the Work Takeover of the RI/FS and rescind the Notice of the Lien so long as NORCO agrees to the following conditions:
 - 1. NORCO shall deposit \$2,000,000 (Two Million Dollars) in an escrow account to which Regional Project Manager (RPM) Rafael Casanova, EPA, Region 6, shall be designated an authorized user with on-line banking access to insure that these funds are used only to pay TRC Companies, Inc. and other designated contractors for conduct of work associated with the RI/FS and to fully monitor payments to such contractors.
 - 2. EPA agrees that NORCO may expend less than \$2,000,000 to complete the remaining work on the RI/FS in a manner that is satisfactory to EPA. NORCO agrees that the RI/FS Order will terminate upon EPA's signature of the Record of Decision (ROD), as provided in Section XXIX, Paragraph 111 of the RI/FS Order. At the time of the ROD containing a cost estimate of the remedial alternative selected by EPA, NORCO will transfer some or all of the remaining balance to EPA to be placed in a Special Account for use by EPA for implementation of the ROD. At the time of the ROD, EPA will propose terms in an administrative settlement agreement to be transmitted to NORCO concerning the selected remedial alternative in the ROD and the amount that has been transferred by NORCO to EPA's Special Account. Should EPA select "no action" as the appropriate response action in the ROD, NORCO agrees to transfer an amount for contingencies as mutually agreed upon by EPA and NORCO.
 - 3. NORCO shall deposit an additional Five Million Dollars (\$5,000,000) into the escrow account established in #1 above, to which RPM Rafael Casanova, Region 6, is an authorized user with on-line banking access. Such funds shall be held in the escrow account until EPA's signature on a ROD as provided in Section XXIX, Paragraph 111 of the RI/FS Order. At the time of the ROD

containing a cost estimate of the remedial alternative selected by EPA, NORCO will transfer some or all of \$5,000,000 to EPA to be placed in a Special Account for use by EPA for implementation of the ROD. At the time of the ROD, EPA will propose terms in an administrative settlement agreement to be transmitted to NORCO concerning the selected remedial alternative in the ROD and the amount to be transferred by NORCO to EPA's Special Account. Should EPA select "no action" as the appropriate response action in the ROD, NORCO agrees to transfer an amount for contingencies as mutually agreed upon by EPA and NORCO.

4. NORCO agrees to revise and resubmit for EPA approval the Phase II Work Plan to reflect changes in procedures, personnel, etc. related to NORCO's change to the contractor, TRC Companies, Inc., as its Project Coordinator for the RI/FS work, and to incorporate a schedule of activities. NORCO agrees to perform its activities in accordance with the Quality Management Plan (QMP), Quality Assurance Project Plan (QAPP) and Field Sampling Plan (FSP), as approved by EPA. In addition, RPM Rafael Casanova may direct NORCO to perform additional work concerning the RI/FS in a Technical Memorandum.
5. EPA plans to issue a Record of Decision concerning the Site on or before September 30, 2012. NORCO agrees therefore to submit a final report required by the RI/FS no later than March 31, 2012.
6. NORCO agrees to EPA's determination that an oversight contractor is appropriate for providing oversight of the RI/FS work by NORCO.
7. NORCO agrees that EPA, having drawn the Five Hundred Thousand Dollars (\$500,000) on the Letter of Credit No. 61617567 established for the RI/FS shall maintain the \$500,000 in Special Account #2 for the RI/FS under the exclusive control of EPA. As provided in Section XXIII, Paragraph 86 of the RI/FS Order, upon the satisfactory performance of the RI/FS Order by NORCO and the termination of the RI/FS Order by a signed ROD, such funds in Special Account #2 will be rolled over for the use by EPA for the implementation of the ROD.
8. NORCO agrees to replenish the Special Account in the amount of Two Hundred Ninety Nine Thousand Fifty Nine Dollars and Fifty Five Cents (\$ 299,059.55), the amount of unrecovered costs to date that have not been collected by EPA. In accordance with the RI/FS Order, NORCO shall replenish Special Account #2 as specified in the RI/FS Order upon receipt from EPA of a notice to replenish.
9. NORCO agrees to pay stipulated penalties in the amount of One Million Dollars (\$1,000,000) for defaulting in the performance of the RI/FS Order, which amount

shall be paid into the Hazardous Substance Superfund.

10. NORCO agrees that EPA shall continue the process of lifting the suspension of the listing of the Falcon Refinery Site on the NPL and list the Site on the Final NPL. As specified in Section XXVI, Paragraph 97 of the RI/FS Order, the Falcon Refinery Site will be listed based on the conditions of the site prior to the initiation of any response activities by NORCO, and NORCO shall not challenge a final listing based on changed conditions due to a partial cleanup.
11. NORCO agrees that should EPA determine that NORCO has failed to comply with the terms of this Agreed Order, EPA shall issue a Work Takeover to NORCO and proceed to complete the investigation of the Falcon Refinery Site as specified in the RI/FS Order, using the funds from the payment of the Letter of Credit for the RI/FS (Letter of Credit No. 61617567 that is maintained in the Special Account under the control of EPA.
12. NORCO agrees that should EPA determine that NORCO has failed to comply with this Agreed Order, such decision is not subject to dispute resolution provisions.

As evidenced by the signature of the Owner or a duly authorized representative, NORCO consents to the terms in this Agreed Order.

Date: _____

Signature of Owner or Duly Authorized Representative

Title

Address

Phone